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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Del Oro Water Company, Inc. [U61W] for a Certificate of Public Convenience and Necessity to Acquire Black Butte Water Company [U65W], a California General Partnership, Glenn County and to Establish Rates for Service.

Application 14-12-015
(Filed December 12, 2014)

**DECISION GRANTING DEL ORO WATER COMPANY, INC.'S
AMENDED APPLICATION TO ACQUIRE BLACK BUTTE WATER
COMPANY UNDER PUBLIC UTILITIES CODE SECTIONS 851-854
AND TO ESTABLISH RATES OF SERVICE**

Summary

This decision grants authority for Black Butte Water Company (Black Butte), a California general partnership to sell and Del Oro Water Company, Inc. (Del Oro) to purchase Black Butte for a price of \$47,197. Black Butte serves approximately 87 customers contiguous to Orland in Glenn County. This decision also revokes Black Butte's Certificate of Public Convenience and Necessity. Upon consummation of the purchase, Del Oro will assume Black Butte's public utility obligations and Del Oro will file Black Butte's then-current tariff rates for Del Oro's new Black Butte Water District, and Black Butte's old tariffs will be canceled.

As this decision addresses a purchase and transfer of a regulated water utility to another regulated water utility, there are no direct safety implications.

However, as Del Oro is a much larger water utility operating 15 similar small water systems, it is reasonable to expect that Del Oro will apply its small water systems expertise, and greater financial integrity which will benefit safety and reliability for Black Butte customers. Black Butte customers will also have access to Del Oro's 24-hour Call Center.

1. Background

On December 12, 2014, Del Oro Water Company, Inc. (Del Oro), filed Application (A.) 14-12-015, requesting authority under Section 1001 of the Public Utilities Code¹ for a Certificate of Public Convenience and Necessity (CPCN) to acquire a water system contiguous to Orland in Glenn County. Attached to A.14-12-015 are Black Butte Water Company's (Black Butte) service area map, water supply permit, installed water system facilities, water quality analysis, the computation of the water requirement including standby and emergency sources of water supply, and the Agreement of Purchase and Sale of Assets (Sales Agreement). Estimated operating results and requested rates were also attached.

Subsequently, Del Oro filed an Amended Application (Amended Application) on July 9, 2015.² The Amended Application requested, pursuant to Rule 3.6 of the Commission's Rules of Practice and Procedure (Rules), and Sections 851-854, authorization for Black Butte, a California General Partnership (Black Butte GP) to transfer and Del Oro to acquire Black Butte, establish rates as requested in A.14-12-015, and to relieve Black Butte of its public utilities responsibilities.

¹ Unless otherwise noted, all statutory references are to the Public Utilities Code.

² The Amended Application incorporates all of the provisions in A.14-12-015.

On May 1, 2015, Del Oro noticed its customers regarding the Amended Application, and filed this notice with the Commission on May 4, 2015.

No protests to the Amended Application were received.

2. Discussion

Black Butte is a Class D regulated water utility serving approximately 87 customers, all of whom are metered residential customers in Glenn County adjacent to the City of Orland. Black Butte was awarded a CPCN by Decision (D.) 70863 on June 14, 1966. Black Butte's water system consists of one active well, and one 5,000 gallon steel pressure vessel which maintains system pressure.³ Del Oro's Amended Application states that the Black Butte water system conforms to the minimum standards of the Commission's General Order 103-A.⁴

Black Butte's 2014 Annual Report states that Black Butte's 2014 total revenues were approximately \$18,100, with operating expenses of \$20,800, resulting in negative net income of approximately \$2,700.⁵ The 2014 Annual Report also states that Black Butte has approximately \$50,000 in assets.

By comparison, Del Oro is a Class B regulated water utility serving approximately 8,100 customers in 15 districts in Northern and Central California. For 2014, Del Oro's total revenues are approximately \$5.3 million and

³ See 2014 Annual Report of Black Butte to the Commission. (Annual Report).

⁴ Rules Governing Water Service, including Minimum Standards for Operation, Maintenance, Design and Construction (effective September 10, 2009).

⁵ See 2014 Annual Report at 11.

\$4.4 million in operating expenses. Del Oro's 2014 assets are approximately \$23.2 million.⁶

Del Oro proposes to operate Black Butte as a separate district under the supervision of a Regional Superintendent stationed near Chico approximately two miles from Black Butte. All field personnel who will operate the Black Butte system are appropriately licensed. In addition, Black Butte customers will have access to Del Oro's 24-hour Call Center.

3. Standard of Review

Proposed water utility ownership changes are reviewed under Public Utilities (Pub. Util.) Code Sections 851-854 and 2718-2720. Pub. Util. Code §§ 851-854 prohibit the sale or transfer of control of a public utility without the advance approval of this Commission. Pub. Util. Code §§ 2718-2720 encourage the acquisition of small water companies by larger, more financially secure entities and require that the Commission use the fair market value when determining the rate base for an acquired water system.

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility,⁷ and also requires the buyer to demonstrate that the buyer's acquisition of the public utility yields a tangible benefit to the ratepayer.⁸ Using the ratepayer indifference test to assess the sale of Black Butte to Del Oro, the Commission should evaluate several key metrics including: (1) service

⁶ See Del Oro 2014 Annual Report at 7 and 10.

⁷ Under the ratepayer indifference test, any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the buyer.

⁸ See D.05-04-047 at 9-11; D.04-01-066 at 8-11; and D.01-09-057 at 26-28.

quality; (2) continuity of service; and (3) the impact of the purchase price on ratebase.

We also assess whether the transaction is in compliance with California Environmental Quality Act (CEQA) requirements, and whether all required approvals of other agencies are received, when assessing whether a water utility should be transferred.

4. How Will the Proposed Sale Affect Service Quality?

Del Oro will provide management of the operations of Black Butte when the transfer of ownership is approved by the Commission. Del Oro has extensive experience in the provision of water services in the State of California. Since 1963, Del Oro has operated under the regulatory jurisdiction of the Commission and currently provides water service to approximately 8,100 customers. Del Oro will provide operational and maintenance services, collect water samples as required by the California State Water Resources Control Board, Division of Drinking Water (SWRCB DDW), respond to emergencies, and prepare reports to governmental agencies regarding the operation of the water system. We find that service quality will continue or be improved and it is advantageous to Black Butte customers for the transfer to be approved.

5. How Will the Proposed Sale Affect Service Continuity?

Del Oro proposes to acquire Black Butte as it can profitably and efficiently consolidate Black Butte with Del Oro's regulated water systems that it owns and operates. The sale relieves Black Butte from its duty to provide public utility water service. The Sales Agreement ensures an orderly water system ownership transition, and thereby (1) offers continued water service by a responsible and experienced new owner, (2) reduces the possibility that the Black Butte water

system may be abandoned or placed in receivership, and (3) provides improved financial stability for future improvements to the water system.

6. Is the Purchase Price Reasonable and Properly Calculated?

The Sales Agreement states that Del Oro will purchase Black Butte for \$45,197 plus any other assets added from the time of this agreement until the closing. The total purchase price of \$47,197 includes \$2,000 for a recently purchased pump. Del Oro indicates that after acquisition, it will allocate the purchase price to land (\$13,500), tanks, meters and buildings (\$5,000), Accounts Receivable (\$1,500), and to Service Area Rate Recovery (SARR) (\$27, 197).⁹ The Commission examined available records of the water system including income statements, balance sheets, and the net book value of the total plant in service, which is \$18,000 plus \$2,000 for a recently purchased pump, or \$20,000. As the SARR is \$27,197, the total of \$47,197 is the amount to be paid by Del Oro for Black Butte. Del Oro states that it will not increase Black Butte customer rates at this time; however, Del Oro estimates that it will increase rates through future general rate case (GRC) increase requests for Black Butte customers.¹⁰

As the purchase price is equivalent to the net book value, we find that the purchase price is reasonable. Furthermore, we note that Del Oro's economies of scale in operating numerous districts, as well as the stronger financial position of Del Oro relative to Black Butte, provides greater financial support for future

⁹ As explained by Del Oro in its Amended Application, SARR is a surcharge included in Black Butte's current tariffs, and funds a Contract Work Memorandum Account. SARR was accrued from 2009-2013. SARR is not an item in rate base and will be paid to sellers at the time of closing.

¹⁰ Estimated GRC rate changes in 2016 and 2020 are shown in the A.14-12-015 Exhibit H.

necessary Black Butte water system improvements. In consideration of these factors, we find that the proposed sale meets the ratepayer indifference test.

7. Is a CEQA Review Required by the Proposed Sale?

We have reviewed the Amended Application to determine whether CEQA applies to this proposed sale and transfer. CEQA applies to a “project or action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change...[and involves] the issuance to a person of a lease, permit, license, certificate, or entitlement for use by one or more public agencies.”¹¹ If an application does involve a project under CEQA, the Commission’s Rule 2.4 imposes other procedures and requirements on the applicant.

The Amended Application states that as the water system currently exists, there is no environmental impact assessment required by CEQA. We construe this statement to be a motion under Rule 2.4(c) for a determination of the applicability of CEQA.

The Amended Application involves only a proposed change in control and operation of existing water facilities. No new construction or changes in the source of water supply are being proposed. There is no evidence of any other changes in the operation of the system. Accordingly, there is no possibility that the transaction may have any significant effect on the environment.

Based on the record before us, there is no evidence of any potential change to the environment as the result of our approval of this Amended Application.¹²

¹¹ CEQA Guidelines, California Code of Regulations, Title 14, Section 15378(a)(2003).

¹² CEQA Guidelines, California Code of Regulations Title 14, Section 15061(b)(3) “A project is exempt from CEQA if...it can be seen with certainty that there is no possibility that the activity

Footnote continued on next page

As a result, we conclude that our approval of the application is exempt from CEQA.

8. Has Del Oro Received Permits Required by Other Agencies to Operate the Black Butte System?

Pursuant to the provisions of California Health and Safety Code Section 116525(a), any person or entity operating a public water system must have a permit to operate that system from SWRCB DDW. A change in ownership of a public health system requires the prospective new owner to apply to and satisfy the SWRCB DDW requirement that the new owner “possesses adequate financial, managerial, and technical capability to ensure the delivery of pure, wholesome, and potable drinking water.”

Black Butte’s current permit to operate its system as attached to Del Oro’s Amended Application is the Department of Health Services Water Supply Permit No. 010293P11006, dated December 31, 1993.

As a consequence of the purchase of Black Butte by Del Oro, Del Oro must apply and receive a permit to operate the system from SWRCB DDW.

9. Should Del Oro be Required to File an Informal GRC for the Black Butte System?

The Amended Application indicates that Del Oro proposes to file GRC requests in 2016 and 2020.¹³ While the Amended Application also states the rates requested are as outlined in Exhibit H,¹⁴ Del Oro clarified that it is not requesting

in question may have a significant effect on the environment, the activity is not subject to CEQA.”

¹³ See Amended Application, Exhibit H.

¹⁴ See Amended Application, p. 7.

an increase in rates at this time but that its showing in the Application, Exhibit H, is illustrative of how it proposes to increase rates in the future.

Black Butte last received a GRC increase in Resolution (Res.) W-5001, adopted August 28, 2014. Res. W-5001 increased rates by \$11,747 or 57.3%. Res. W-5001 also authorized Black Butte to surcharge all monthly bills by an amount of \$8.23 per month to recover the balance of the Contract Work Memorandum Account accrued from 2009 through 2013.

As provided in D.92-03-093,¹⁵ a Class D water utility such as Black Butte may file for general rate increases annually. Although Del Oro indicates it is not requesting a GRC increase at this time, as Black Butte's last GRC was in August 2014, Del Oro may file for a GRC increase in rates which should not be effective before September 2015.

10. Compliance and Safety

The Commission's Budget and Fiscal Service (Fiscal Office) indicates that Black Butte has not yet paid its Commission User Fees (User Fees) for 2014. Accordingly, we condition our authority for the sale on the receipt of these User Fees by the Commission's Fiscal Office.

As this transfer and purchase will allow a larger water utility with greater operational and financial abilities to operate Black Butte, ratepayer safety is enhanced by the ability of Del Oro to recognize and finance necessary future system improvements. In addition, ratepayers will now have access to Del Oro's 24-hour Call Center, which will provide ratepayers with the opportunity to report water system problems, which will also enhance safety.

¹⁵ See D.92-03-093, Ordering Paragraph 9.

11. Conclusion

Both Black Butte and Del Oro desire the sale and transfer of the Black Butte water system to Del Oro. Del Oro has the experience, ability, and financial resources to operate the Black Butte system. The terms and conditions of service will remain unchanged as a result of the acquisition. There will be no immediate change in Black Butte rates, but rates may change as a result of any future GRC.

We conclude that the proposed sale of Black Butte to Del Oro is reasonable, is in the public interest, and will provide tangible benefits to ratepayers, which include continued provision of quality water service by a water service provider that has the operational experience and financial ability to operate and own the Black Butte system. We therefore conditionally approve the sale of the Black Butte system as of the date of this decision. Since Del Oro has not yet received a permit from the SWRCB DDW to operate the Black Butte system, we condition our authority on Del Oro's receipt of this permit, and require that Del Oro file it in this docket as a condition to exercise the authority granted herein. We also condition this authority on the receipt of Black Butte's 2014 User Fees.

Del Oro will initially charge currently authorized Black Butte tariff rates, and be bound by all Commission decisions, rules, and regulations applicable to regulated water utilities in its operation of the Black Butte system. Del Oro must file a Tier 1 advice letter within 30 days of taking ownership of the Black Butte system in order to update the tariff sheets with its new ownership information.

As Black Butte's rates were last increased in August 2014, we will not require Del Oro to file a GRC. However, as discussed above, Del Oro may file a GRC for Black Butte with an effective date of September 2015 or later. This GRC filing must take the form of a Tier 3 Advice letter.

The transfer and purchase of the Black Butte system will relieve Black Butte of its duty to provide public utility water service to the Black Butte ratepayers. Accordingly, we revoke Black Butte's CPCN and require Black Butte's current tariff sheets to be removed and replaced by the new Del Oro tariff sheets for its Black Butte District.

12. Categorization and Need for Hearing

In Resolution ALJ 176-3349 dated January 15, 2015, the Commission preliminarily categorized this application as ratesetting. Since there were no protests, the preliminary determination that hearings were necessary is changed to no hearings are necessary.

13. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

14. Assignment of Proceeding

Commissioner Liane M. Randolph is the assigned Commissioner and Gary Weatherford is the assigned Administrative Law Judge for this proceeding.

Findings of Fact

1. By Resolution ALJ 176-3349 dated January 15, 2015, it was preliminarily determined that this is a ratesetting proceeding and that hearings would be necessary. No protests were filed and no hearings were held.
2. The transfer and purchase of Black Butte from Black Butte GP to Del Oro is desired by both parties.
3. Black Butte provides water service in an area contiguous to Orland, Glenn County, California to approximately 87 customers.

4. Black Butte GP no longer desires to continue doing business as a regulated public utility.

5. Del Oro has extensive experience in providing water services in the State of California under the regulated jurisdiction of the Commission since 1963.

6. The purchase price of the system, \$47,197, is reasonable and calculated pursuant to applicable statutes.

7. Del Oro has the financial net worth and sufficient liquid assets to own and operate the Black Butte water system.

8. The sale of Black Butte will have no significant effect on the environment.

9. After consummation of the transfer, Black Butte GP will no longer provide public utility service to customers in the Black Butte water system.

10. Del Oro plans to initially charge currently authorized tariffed rates in the Black Butte system and be bound by all outstanding Commission decisions.

11. It has been approximately 12 months since the rates of Black Butte have been reviewed and approved by the Commission.

12. Black Butte has not yet paid User Fees for 2014.

13. Del Oro has not yet received a permit from the SWRCB DDW to operate the Black Butte system.

14. Transfer of ownership of Black Butte to Del Oro will enhance safety for Black Butte ratepayers due to Del Oro's greater financial resources and because Black Butte ratepayers will have access to Del Oro's 24-hour Call Center to report problems.

Conclusions of Law

1. Transfer of ownership of the Black Butte system meets the test of ratepayer indifference, in that customers will be unaffected in terms of service quality and continuity of service.

2. Black Butte GP should be conditionally authorized to sell and Del Oro should be conditionally authorized to buy the Black Butte Water Company.
3. After the sale of Black Butte to Del Oro is final, Black Butte GP should no longer be required to provide public utility service.
4. Effective with the final date of sale of Black Butte to Del Oro, Black Butte's CPCN should be revoked, and Black Butte's current tariffs on file with the Commission's Division of Water and Audits should be cancelled.
5. The proposed sale of Black Butte is exempt from CEQA, and no further environmental review is required.
6. Pursuant to CH&S, when a change in ownership of a public water system occurs, the buyer of the public water system must apply for a new operating permit.
7. Authority for Black Butte GP to sell and Del Oro to buy Black Butte should be conditioned on Del Oro's receipt of a permit from SWRCB DDW to operate the system, and on receipt by the Commission's Fiscal Office of Black Butte's User fees for 2014.
8. Del Oro should file a copy of the SWRCB DDW permit in this docket within 30 days of receipt of such authority being granted.
9. As the applicant, Del Oro should verify that Black Butte has paid its User Fees for 2014. This verification should be filed in this docket.
10. Del Oro should not take possession of the Black Butte system and not collect tariffed rates from Black Butte customers until it has received an operating permit from SWRCB DDW.
11. Any future GRC filed by Del Oro for Black Butte customers should not be effective until after August 2015.

12. Del Oro should initially charge currently authorized tariff rates in the Black Butte system, and should be bound by all Commission decisions, rules, and regulations applicable to regulated water utilities.

13. The proceeding should remain open in order to receive a copy of the required SWRCB DDW operating permit, and verification of payment of Black Butte's 2014 User Fees.

ORDER

IT IS ORDERED that:

1. The authority for Black Butte General Partnership to sell and transfer Black Butte Water Company to Del Oro Water Company, Inc., is granted, conditioned on Del Oro Water Company's receipt of an operating permit from the State Water Resources Control Board, Division of Drinking Water to operate the Black Butte water system, and upon verification of payment of Black Butte's Commission User fees for 2014.

2. Del Oro Water Company, Inc., must file a copy of the operating permit from the State Water Resources Control Board, Division of Drinking Water referenced in Ordering Paragraph 1 as a compliance filing in this docket within 30 days of receipt of such authority. Del Oro Water Company, Inc., shall verify that Black Butte Water Company has paid its Commission User Fees for 2014. The filing of these compliance filings will not reopen the record of this proceeding.

3. Del Oro Water Company, Inc. must not take possession of the Black Butte Water Company (Black Butte) water system and may not collect tariffed rates from Black Butte customers until it has received a temporary operating permit from the State Water Resources Control Board, Division of Drinking Water.

4. After the sale of the Black Butte Water Company (Black Butte) water system is final, Black Butte, a California General Partnership, is no longer required to provide regulated water service to customers of the Black Butte water system and Black Butte's Certificate of Public Convenience and Necessity is revoked.

5. Del Oro Water Company, Inc., may not file a General Rate Case for the Black Butte Water Company water system prior to September 2015.

6. Del Oro Water Company, Inc., must initially charge currently authorized tariffed rates in the Black Butte Water Company water system.

7. Del Oro Water Company, Inc., must file a Tier 1 Advice Letter within 30 days of taking ownership of the Black Butte Water Company water system in order to update tariff sheets with its new ownership information.

8. In its operation of the Black Butte Water Company water system, Del Oro Water Company, Inc., is bound by all Commission decisions, rules, and regulations applicable to regulated water utilities.

9. Within 10 days of the sale of the Black Butte Water Company water system to Del Oro Water Company, Inc., Del Oro Water Company Inc. must notify the Commission's Director of Water and Audits in writing that the sale has been completed.

10. Application 14-12-015 remains open.

This order is effective today.

Dated _____, at San Francisco, California.